IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-03-2008

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NOs.195 of 2001 & 15395 of 2004
and
WPMP.NO.18273 of 2004

W.P.No.195 of 2001

A. Uma Rani
D/o.K. Arunachalam .. Petitioner

Vs.

1. The District Collector,
Vellore District,
Vellore.

2. The President,
Thippasamudram Village,
Anaicut Union,
Vellore Taluk (District). .. Respondents

W.P.No.15395 of 2004

T.M. Kumar
S/o. Munisamy .. Petitioner

Vs.

1. The District Collector,
Vellore District, Vellore.

2. The Commissioner Panchayat Union,
Anaicut, Vellore District.

3. The President,
Thippasamudram Village,
Vellore District.
4. Uma Rani (Part time Panchayat Clerk)
Thippsamudhiram,
Vellore District. .. Respondents

W.P.No.195 of 2001: This petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the entire records pertaining to the 2nd respondent order dated 26.5.2000 and quash the same and direct the 2nd respondent to reinstate

the petitioner in service with all attendant benefits.

W.P.No.15395 of 2004: This petition is filed under Article 226 of the Constitution of India for the issuance of writ of mandamus forbearing the respondents 1 to 3 from terminating the petitioner from the post of Part Time Clerk in Thippasamudhiram Panchayat Board without following due process of law.

For Petitioner in : Mr.D. Rajagopal
WP.195/2001

For Petitioner in : Mr.R. Margabandhu
WP.15395/2004

For Respondent-1 : Mr.M. Dhandapani
in both WPs Special Govt. Pleader

For Respondent-2 : Mr.V.K. Elango
In both WPs
- - -
COMMON ORDER

Heard the learned counsels appearing for the parties.

2. The facts giving rise to the writ petitions are as follows:-
The petitioner in W.P.No.195 of 2001 was appointed as Part Time clerk under Thippasamudram Panchayat. Subsequently, a show cause notice was issued by the President of the Panchayat Board containing several allegations. However, no reply was received from the petitioner and thereafter by order dated 26.5.2000, such petitioner was terminated from service, which is to the following effect :- (As per English translation)
While you were working as a part time clerk in Thippasamudram panchayat, you have committed some offences. So on the approval of the panchayat explanation was called for on 13.05.2000 by registered post and the same was returned. Since you have refused second time also, notice was sent and no reply was received, inspite of the affixtures also no reply. You have not written the panchayat accounts properly. You have been disturbing the functions of Panchayat Board, you have not sent any reply for the show cause notice. Instead you have defamed the Panchayat. So the Panchayat unanimously resolved that all the offences are proved. So, on 26.05.2000, onwards you have been terminated from service as a part time clerk by way of resolution. Submit the panchayat Board s accounts before the Panchayat Board.
Subsequently, the petitioner gave a representation dated 7.6.2000 to the District Collector, but no order having been passed, the present writ petition was filed. In the consequential vacancy, Thiru T.M. Kumar, the petitioner in W.P.No.15395 of 2004, was appointed on 5.6.2000.
3. On an earlier occasion, W.P.No.195 of 2001 was allowed by judgment dated 31.10.2003 only on the ground that the Panchayat President had no jurisdiction to pass the order of termination. Subsequently, a Contempt Petition was also filed by the writ petitioner of W.P.No.195 of 2001. At that stage, apprehending that his services would be terminated, the petitioner in W.P.No.15395 of 2004 had filed W.P.No.15395 of 2004 and obtained on order of injunction restraining the President from terminating his service. In the meantime, the order dated 31.10.2003 in W.P.No.195 of 2001 has been reviewed by order dated 3.8.2007 and such W.P.No.195 of 2001 was directed to be taken up for fresh disposal on merits.

4. So far as W.P.No.15395 of 2004 is concerned, it is obvious that the writ petitioner in such case

was appointed in the consequential vacancy which arose on account of the termination order passed in respect of the writ petitioner in W.P.No.195 of 2001. Therefore, if it is ultimately found that termination order impugned in W.P.No.195 of 2001 was illegal, the petitioner in W.P.No.15395 of 2004, who was appointed only on the consequential vacancy, would have no further right to continue in service. Therefore, the fate of W.P.No.15395 of 2004 is obviously inter-linked with the ultimate decision in W.P.No.195 of 2001.
5. In the counter in W.P.No.195 of 2001, however, it is stated that since the petitioner had refused to accept the notice, there was no occasion for holding an enquiry

6. The main contention in W.P.No.195 of 2001 is to the effect that no notice had been served and at any rate no enquiry having been conducted, the order of termination is illegal. The other contention, which is raised in course of hearing, is to the effect that in fact the order of termination was passed by the Vice President, who was discharging the function of the President, and, therefore, such person has no authority keeping in view the provisions contained in Rule 9 of the Tamil Nadu Village Panchayats (Devolution and Delegation of President□s Function) Rules, 1999.

7. So far as the latter aspect is concerned, I do not think the submission made by the counsel for the petitioner can be accepted. Rule 9 of the Tamil Nadu Village Panchayats (Devolution and Delegation of President□s Function) Rules, 1999 is to the following effect:-
□9. Restrictions and control imposed on temporary presidents. □
The temporary president appointed under sub-section (3) of the section 47 of the Act shall perform the functions of the president. Subject to the restrictions and conditions that he shall not □
(i) appoint, promote or punish any officer or servant of the village panchayat;
(ii) to (vi) omitted as not necessary □
Section 47 of the Tamil Nadu Panchayats Act is extracted hereunder :-
□47. Devolution of president's functions and filling up of vacancies in the office of president. - (1) When the office of president is vacant, the vice president shall exercise the functions of the president until a new president is declared elected and assumes office.
(2) If the president has been continuously absent from jurisdiction for more than thirty days or is incapacitated, his functions during such absence or incapacity shall, except in such circumstances as may be prescribed, devolve on the vice-president.
(3) When the office of president is vacant or the president has been continuously absent from jurisdiction for more than thirty days or is incapacitated, and there is either a vacancy in the office of vice-president or the vice-president has been continuously absent from jurisdiction for more than thirty days or is incapacitated, the functions of the president shall devolve on a member of the village panchayat appointed by the Inspector in this behalf, and if no member of the village panchayat is available for such appointment, on such person as may be appointed by the Inspector in this behalf.
The member of the village panchayat or the person so appointed (who shall be called as the temporary president) shall perform the functions of the president subject to such restrictions and conditions as may be prescribed, until a new president or vice-president is declared elected and assumes office, or either the president or the vice-president returns to jurisdiction or recovers from his incapacity, as the case may be.
(4) Any vacancy in the office of president shall be reported to the Tamil Nadu State Election Commissioner by such person and within such time as may be prescribed and the Tamil Nadu State Election Commissioner shall arrange for the election of the president.
(5) The president shall have power to control and revise the exercise of discharge of any functions devolving on the vice-president under sub-section (2).□

8. It is obvious that the Vice President, who has become President under Section 47(1) of the Tamil Nadu Panchayats Act, does not come within the restrictive delegation contemplated under Rule 9

and, therefore, this submission is not acceptable.

9. It is the case of the petitioner that no notice had been served. The respondents in their counter had indicated that notice had been issued, but the petitioner had refused to accept the same. In the typed set of papers, such endorsement made by the Postman had been filed. In such view of the matter, it is difficult to accept the contention of the petitioner that notice had not been served.

10. Learned counsel for the petitioner then contended that, even assuming that notice had been served, keeping in view the nature of allegations made, the respondents could not have come to the conclusion that the petitioner is guilty of all the charges, without holding any enquiry, and therefore such order is liable to be quashed on account of the fact that no enquiry had been held. In this context, the learned counsel for the petitioner by placing reliance upon the decision of the Supreme Court reported in AIR 1962 SC 1348 (THE IMPERIAL TOBACCO COMPANY OF INDIA LTD., v. ITS WORKMEN), submitted that even if the petitioner had declined to receive show cause, yet it was necessary to hold an enquiry.

11. In the present case, keeping in view the nature of charges framed against the petitioner, particularly Charge No.7 or Charge No.9, it could not have been assumed that the petitioner was guilty of those allegations. The impugned order has already been extracted. It only indicates that in a general manner all the mistakes and irregularities committed by Uma Rani are held to be proved.

12. In the peculiar facts and circumstances of the present case and keeping in view the ratio of the aforesaid decision, it is held that in the absence of enquiry relating to some of the allegations, which required some positive evidence on the side of the respondents, the impugned order cannot be sustained.

13. Learned counsel for the respondent Panchayat then submitted that, in any event, the Panchayat must be given opportunity to hold enquiry so that the truth or otherwise of the allegations can be gone into. Learned counsel for the petitioner states that a reply shall be submitted within a period of three weeks and the matter should be finalized as expeditiously as possible.

14. Having regard to all these aspects, I feel that the respondents should be directed to hold an enquiry and proceed further in accordance with law.

15. The next question is relating to continuance or otherwise of the petitioner in W.P.No.15395 of 2004, namely, Thiru T.M. Kumar. It is obvious that such petitioner was appointed in the consequential vacancy caused on account of termination of service of Tmt. Uma Rani, the petitioner in W.P.No.195 of 2001. Ultimately, if it is found that the Tmt. Uma Rani is to be reinstated in service, obviously Thiru T.M. Kumar cannot be allowed to continue.

16. Therefore, the matter is remanded to the respondent Panchayat for holding enquiry and the petitioner is permitted to submit her reply within a period of three weeks. The enquiry shall be entrusted to the President of the Panchayat or any other officer authorized by him. Such enquiry shall be concluded as expeditiously as possible, preferably within a period of four months from the date of receipt of the order Till the matter is decided in one way or the other, Thiru T.M. Kumar shall continue. However, if ultimately Tmt. Uma Rani is reinstated in service, Thiru T.M. Kumar shall have no further right to continue.

17. With the above directions and observations, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

07.03.2008
Index : Yes / No
Internet: Yes / No
dpk
To
The District Collector,
Vellore District, Vellore.

P.K. MISRA, J

COMMON ORDER IN WP.NOs.
195 of 2001 & 15395 of 2004

07-03-2008